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IN THE

Supreme Court of the United States

NOVEMBER TERM, 1952.

No. 456

WILLIAM P. McNISH, *Petitioner, Appellant,*

vs.

THE AMERICAN BRASS COMPANY and the ANSONIA BRASS WORKERS' UNION LOCAL No. 445 P.M.C. of the INDUSTRIAL UNION OF MARINE & SHIPBUILDING WORKERS OF AMERICA, C.I.O., *Respondents, Appellees.*

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF ERRORS OF THE STATE OF CONNECTICUT.

WILLIAM P. McNISH, Petitioner,

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TABLE OF CONTENTS

	PAGE
I. Timeliness of Petition	1
II. Opinions below	2
III. Jurisdiction of this Court	2
IV. Legal Issue Presented for Review	3
V. Federal Statutes Involved	4
VI. Nature of the Case	5
VII. Federal Questions Raised in the Pleadings and Decided Adversely to the Petitioner	7
VIII. State Court's Incorrect Interpretation of Substantial Federal Question Involved as Requiring Grant of Writ of Certiorari	9
IX. Argument as to Legal Issue	10
A. The Causes of Action for Breach of Contract or Tort do not Constitute "Unfair Labor Practices" as defined by the N.L.R. Act of which the N.L.R. B'd has exclusive jurisdiction	10
(1) State Court's Incorrect Interpretation of an "Unfair Labor Practice" under the Act	10
(2) State Court's Ruling as not Substantiated by its Authorities Cited	12
B. Even if the Causes of Action for Breach of Contract for Tort do Constitute "Unfair Labor Practices," as defined by the Act, the State Court is not Divested of Jurisdiction over these Causes of Action nor is Exclusive Jurisdiction Thereof Vested in the N.L.R. Board under the Act	12
(1) State Court's Incorrect Interpretation of Exclusive Jurisdiction of the N.L.R. Board under the Act	13
(2) State Court's Ruling as not Substantiated by its Authorities Cited	17

JUN 2 1954

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PAGE

X. A Decision of the Court upon the Issues Presented as making Question of "Exhaustion of Remedies" Immaterial 18

XI. Conclusion 21

AUTHORITIES CITED.

Cases.

Algoma Plywood & Veneer vs. Wis. Emp. Bd., (1948), 336 U.S. 301, 313 15

Allen Bradley Local vs. NLRB, (1942), 315 U.S. 740, 748 .. 15

Basile vs. Fisher, (N.Y.) (1949) 197 Misc. 493, 496 15

Brotherhood of R.R. Trainmen vs. Howard, (1952) 96 L. Ed. 917, 343 U.S. 768 11

Dooley vs. Leigh Valley R.R., (1941) 130 N. J. Eq. 75, 85 .. 17

Gibbs Corp. (1947) 74 Natl. Lab. Rel. Bd. 1181, 1244 19

Goerner vs. Lippe, (N.Y.) (1941) 3 Labor Cases #60285, Page 60866 15

Gen. Driver, Chauffeurs vs. Natl. Lab. Rel. Bd., (1950) 179 Fedl. (2d) 492 20

Grand Intl. Bro. of Engineers vs. Mills, (1934) 31 Pac. (2d) 971, 977, 43 Ariz. 379 17

Intl. L. S. & W. Union vs. Juneau Spruce, (1952) 342 U.S. 237, 244 16

John Hancock Mut. Life Ins. vs. United O & P Workers, (1950) 93 Fedl. Supp. 296, 304 f 15

MacKay vs. Loews, Inc., (1950) 182 Fedl. (2d) 170, 172....15, 16

Manhattan Cons. Co. vs. Natl. Lab. Rel. Bd., (1952) 198 Fedl. (2d) 320 20

Marrazoni vs. Riggs National Bk., (1950) 184 Fedl. (2d) 349, 350 16

Moore vs. Ill. Cent. R.R., (1941) 312 U.S. 630, 634 .....17, 21

Natl. Lab. Rel. Bd. vs. Baltimore Trust, (1944) 140 Fedl. (2d) 51, 54 19

Natl. Lab. Rel. Bd. vs. Phillips Gas & Coal, (1944) 141 Fedl. 304, 306 19

PAGE

Natl. Lab. Rel. Bd. vs. Potloch Forest, Inc., (1951) (C.C.A.) 189 Fedl. (2d) 82, 84 11

Order of Ry Conductors vs. So. Ry, (1950) 339 U.S. 253, 256 17

Priest vs. Chicago R. I. & P. R. R., (1951) 189 Fedl. (2d) 813, 815 17

Reed vs. Faiwich Airflex, (1940) 86 Fedl. Supp. 822, 824 .. 16

Reichert vs. Quindazzi, (N.Y.) (1938) 6 N.Y.S. (2d) 284, 286 15

Rentschuler vs. Miss. R.R., (1934) 95 A.L.R. 1, 7, 126 Neb. 493, 253 N.W. 694 17

Republic Steel Corp., (1945) 62 Natl. Lab. Rel. Bd. 1008, 1022 19

Schatte vs. Intl. Alliance, (1950) 182 Fedl. (2d) 158, 163, reaffirming 165 Fedl. (2d) 216 (1948) which affirmed 70 Fedl. Supp. 1008, 1011 (1947) 15, 16, 17, 18

Slocum vs. Del. L. & W. R.R., (1950) 339 U.S. 239, 244 ..17, 21

Studio Carpenters Local vs. Loews, Inc., (1950) 182 Fedl. (2d) 168, 169 .....15, 16

Textile Workers Union vs. Arista Mills, (1951) 193 Fedl. (2d) 529, 533 16

U.A.W. vs. Wilson Athletic Goods, (1950) U.S. Dist. Ct. (Ill.) C.C.H.-#65867, Pg. 7784 16

United Electrical Workers vs. Westinghouse, (1946) 64 Fedl. Supp. 420, 422 15

Wilson & Co. vs. United Pack. House Workers, (1949) 83 Fedl. Supp. 162, 165 16

Statutes.

Natl. Lab. Rel. Act, Sec. 7, 8, 10, 61 U.S. Stat. 146, (June 23, 1947) 2, 4, 5

Other Authorities.

Citations to hearings and committees of Congressional Reports. Labor Disputes, Teller, Vol. 2, (Supp. 1950) #398.162, Pg. 174 14

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PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF ERRORS OF THE STATE OF CONNECTICUT.

To the Honorable Fred M. Vinson, Chief Justice of the United States and the Associate Justices of the Supreme Court of the United States:

The petitioner in the above entitled cause respectfully represents that he has been aggrieved by a decision of the Supreme Court of Errors, the highest court of the State of Connecticut.

I. TIMELINESS OF PETITION

1. The opinion sought to be reviewed by certiorari was rendered by said court upon June 3, 1952,

Rec. Pgs. 43 to 50, and a Motion to Reargue, Rec. Pgs. 52 to 59, was dismissed upon June 24, 1952 without opinion. Rec. Pg. 59.

2. The petitioner duly obtained an order for extension of time to file certiorari until October 22, 1952, Rec. Pg. 62, and thereafter a further extension until November 20, 1952, Rec. Pg. 63, and has filed this petition within the period therein provided.

II. OPINIONS BELOW

The opinion of the Superior Court of Fairfield County, Rec. Pgs. 33, 34, is not reported. The opinion of the Supreme Court of Errors of the State of Connecticut, Rec. Pgs. 43 to 50, is reported in 139 Conn. 44.

III. JURISDICTION OF THIS COURT

The respondents claim that the causes of action for breach of contract and in tort for conspiracy set forth by the petitioner in the complaint, Rec. Pgs. 2 to 14, constitute "unfair labor practices" as defined by the National Labor Relations Act, 61 U.S. Stat. 146, enacted June 23, 1947, and that the respondents had the "right, privilege or immunity" to have any complaint in connection with these matters determined by the National Labor Relations Board under Sec. 10 (a) of the Act. The petitioner disputed this claim made by the respondents and instead asserted that the state court had jurisdiction and was not divested of that jurisdiction over these causes of action for breach of contract and in tort for conspiracy by any provision of the National

Labor Relations Act even if these causes of action constituted "unfair labor practices" as defined by the Act. Rec. Pgs. 31, 32.

The state court decided this question of the "title, right and privilege or immunity" claimed or set up under the Act by the respondents adversely to the petitioner. The entire matter therefore becomes one of the determination of the proper forum under the "right, title, privilege or immunity" set up or claimed under the federal statutes. The United States Supreme Court, therefore, has a right to review this decision of the state court by certiorari because a "title, right, privilege or immunity" specially set up or claimed under the statutes of the United States is involved, in accordance with c. 646, 62 U.S. Stat. 929, enacted June 25, 1948; U.S.C.A., Title 28, #1257, Pg. 88.

IV. LEGAL ISSUE PRESENTED FOR REVIEW

Whether the National Labor Relations Act divests the state court of jurisdiction of causes of action of an individual employee for damages for loss of wages for breach of a collective bargaining contract or in tort for conspiracy to breach such a contract and vests exclusive jurisdiction in the National Labor Relations Board,

(a) Where these causes of action do not constitute "unfair labor practices" as defined by the Act;

(b) Where these causes of action do constitute "unfair labor practices" as defined by the Act.

V. FEDERAL STATUTES INVOLVED

The interpretation of Sec. 7, Sec. 8 (a) (1), (2), (3), Sec. 8 (b) (1), (2), and Sec. 10 (a) of the National Labor Relations Act (i.e. Taft-Hartley Act), 61 U.S. Stat. 146, enacted June 23, 1947, are involved in this action.

The provisions of these sections, insofar as pertinent hereto, are as follows:

"Sec. 7. Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in section 8 (a) (3)."

"Sec. 8. (a) It shall be an unfair labor practice for an employer—

(1) to interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7;

(2) to dominate or interfere with the formation or administration of any labor organization or contribute financial or other support to it; . . .

(3) by discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or dis-

courage membership in any labor organization; . . ."

"(b) It shall be an unfair labor practice for a labor organization or its agents—

(1) to restrain or coerce (A) employees in the exercise of the rights guaranteed in section 7; . . .

(2) to cause or attempt to cause an employer to discriminate against an employee in violation of subsection (a) (3) or to discriminate against an employee with respect to whom membership in such organization has been denied or terminated on some ground other than his failure to tender the periodic dues and the initiation fees uniformly required as a condition of acquiring or retaining membership;"

"Sec. 10 (a) The Board is empowered, as hereinafter provided, to prevent any person from engaging in any unfair labor practice (listed in section 8) affecting commerce. This power shall not be affected by any other means of adjustment or prevention that has been or may be established by agreement, law, or otherwise; . . ."

VI. NATURE OF THE CASE

1. The petitioner was employed for the past eight years or more by the respondent, employer, up to December 3, 1948, when he was "laid off" from work. Complaint, Pars. 1 to 18, Rec. Pgs. 1 to 6.

2. Up to and including said date of December 3, 1948 and for sometime prior thereto the respondent,

employer, had a collective bargaining contract with the respondent, union, under the terms of which contract the petitioner, as an employee, was entitled to certain seniority rights providing for re-employment after a "lay off" from work according to certain seniority rules therein prescribed. Article VI, Seniority Prov., Rec. Pgs. 9 to 13; Complaint, Pars. 1 to 18, Rec. Pgs. 1 to 6.

3. The employer, after said "lay off", re-employed many others but refused to re-employ the petitioner despite the fact that he was entitled to be re-employed under the Seniority Provisions, Art. VI, Rec. Pgs. 9, 10, of this collective bargaining contract; Complaint, Pars. 1 to 18, Rec. Pgs. 1 to 6, resulting in loss of wages to the petitioner.

4. The refusal of the employer to re-employ the petitioner was a violation of the seniority provisions of the collective bargaining contract which required his re-employment under the circumstances. Complaint, Par. 12, Rec. Pg. 5.

5. The refusal of the employer to re-employ the petitioner was caused by the union as a result of a conspiracy between the employer and the union. Complaint, Par. 24, Rec. Pg. 7.

6. The petitioner thereafter instituted suit for damages in the Superior Court of the State of Connecticut by writ and complaint dated May 3, 1950 and alleged:—

(a) **As a first cause of action:** That the employer was severally liable upon the basis of the common law cause of action of breach of contract, for the loss of wages suffered by reason of its violation of the terms of the col-

lective bargaining contract. Complaint, First Count, Rec. Pgs. 1 to 6.

(b) **As a second cause of action:** That the employer was severally liable upon the basis set forth in the First Count, Complaint, Second Count, Pars. 1 to 18, Rec. Pgs. 1 to 6; and further that the employer and the union were both severally and jointly liable upon the basis of the common law cause of action in tort for conspiracy, for the loss of wages suffered by the petitioner as a result of the employer's failure to perform the terms of the collective bargaining contract pursuant to a conspiracy between the employer and the union to prevent the petitioner's re-employment. Complaint, Second Count, Pars. 18 to 28, Rec. Pgs. 6 to 9.

VII. FEDERAL QUESTIONS RAISED IN THE PLEADINGS AND DECIDED ADVERSELY TO THE PETITIONER

1. The employer and the union filed Special Defenses, Rec. Pgs. 15 to 23; 25 to 27, to the petitioner's complaint and alleged in said Special Defenses that:—

(a) The causes of action complained of constituted "unfair labor practices" as defined by the National Labor Relations Act.

(b) The state court had no jurisdiction over the causes of action inasmuch as the exclusive jurisdiction over "unfair labor practices" was vested in the National Labor Relations Board under the Act.

(c) The causes of action set forth in the complaint constituted "unfair labor practices" under the Act so that the petitioner was not entitled to maintain the action inasmuch as he had not exhausted his remedies before the National Labor Relations Board, that is, by appealing to the Board's counsel from the refusal of the Regional Director to issue a complaint against the employer and the union as provided by the Act; and that instead, the petitioner had merely filed an "unfair labor practice" charge against the respondents requesting the issuance of a complaint which the Regional Director had dismissed by letter, without a hearing; and the petitioner had failed to take any appeal from this action of the Regional Director to the Board's counsel as provided by the Act.

2. The petitioner raised the question of the "title, right, privilege or immunity" specially set up or claimed by the respondents under the National Labor Relations Act by way of demurrer in which he challenged the legal sufficiency of the allegation of the employer's and union's Special Defenses. Rec. Pgs. 27 to 33.

3. The trial court overruled the petitioner's demurrer and sustained the legal sufficiency of respondents' Special Defenses, Rec. Pgs. 33 & 34, and the petitioner appealed from the trial court's decision to the highest state court, that is, the Supreme Court of Errors of the State of Connecticut. Rec. Pgs. 39, 40.

4. The Supreme Court of Errors of the State up-

held the determination of the trial court and the petitioner's complaint was dismissed upon the grounds set forth in Paragraph 1 herein, McNish vs. American Brass Co. et als, 139 Conn. 44 ff, from which decision the petitioner seeks a writ of certiorari.

VIII. STATE COURT'S INCORRECT INTERPRETATION OF SUBSTANTIAL FEDERAL QUESTIONS INVOLVED AS REQUIRING GRANT OF WRIT OF CERTIORARI

The federal questions involved in the present action before the state court arise out of the interpretation by the state court of the provisions of the federal statutes commonly known as the National Labor Relations Act or the Taft-Hartley Act.

The issues involved are substantial. They are of national importance. The federal questions involved have been raised in numerous actions before various state and lower federal courts. They will undoubtedly be raised with even more frequency before these tribunals as these questions have never been heretofore determined by the United States Supreme Court.

The present decision of the state court of the State of Connecticut is not in accordance with the reasoning of the United States Supreme Court in analogous cases. Nor is the decision of the state court upon these issues in accordance with the decisions of the lower federal courts or the other state courts. A decision by the United States Supreme Court upon these issues is therefore essential to the welfare of

each and every employee, employer or union who may be involved in a similar case.

IX. ARGUMENT AS TO LEGAL ISSUE

A. The Causes of Action for Breach of Contract or Tort do not Constitute "Unfair Labor Practices" as Defined by the National Labor Relations Act of which the N. L. R. B'd has Exclusive Jurisdiction.

There can be no question, under the decisions hereafter cited, that the state court had jurisdiction over the causes of action for damages by an individual employee for breach of contract or tort, as set forth in the petitioner's complaint, if these causes of action do not constitute "unfair labor practices" as defined by the Act. An analysis of these judicial authorities discloses that the state court erred in holding that the causes of action, as set forth in the petitioner's complaint, constituted "unfair labor practices" as defined by the Act.

(1) STATE COURT'S INCORRECT INTERPRETATION OF AN "UNFAIR LABOR PRACTICE" UNDER THE ACT.

The state court, in effect, determined that discrimination "per se" by an employer under Sec. 8 (a) (3) of the Act or by a union under Sec. 8 (b) (2) and (3) of the Act which resulted in an employee's unemployment, constitutes an "unfair labor practice" under the Act. Rec. Pg. 49. The state court in so doing misinterpreted the federal statutes. The state court's interpretation was also contrary to the decisions of the federal courts.

The decisions of the federal courts hold that discrimination by an employer under Sec. 8 (a) (3) of the Act or by a union under Sec. 8 (b) (2) and (3) of the Act does not constitute an "unfair labor practice" unless its purpose, as expressly defined in the Act, was "to encourage or discourage membership in a labor organization." Not even the vestige of such a claim that this was the purpose of the employer or the union was made by the parties in our case. Complaint, Rec. Pgs. 6 to 8; Respondent's Special Defenses, Rec. Pgs. 14 to 27. The state court erred, therefore, in holding that the actions of the employer and the union, as described in the complaint, constituted an "unfair labor practice" within the definition set forth in the Act. The decision of the state court must, therefore, be reversed by this court just as a similar decision of the district court was reversed by the United States Circuit Court of Appeals.

Natl. Lab. Rel. Bd. v. Potloch Forest, Inc., (1951) (C.C.A.) 189 Fedl. (2d) 82, 84.

Our United States Supreme Court, in an analogous situation under the Railway Labor Act, held that the federal court had jurisdiction of a matter involving racial discrimination as against the Railway Board upon the grounds that the jurisdiction of the Board was confined to those acts specifically designated as discriminatory under that Act and that the type of discrimination involved in the case was not such as designated under the Act, over which the Board had exclusive jurisdiction.

Brotherhood of R.R. Trainmen v. Howard, (1952) 343 U.S. 768.

(2) STATE COURT'S RULING AS NOT SUBSTANTIATED BY ITS AUTHORITIES CITED.

The citations referred to by the state court in ruling that the discrimination involved in this action "constituted an unfair labor practice" as defined by the Act of which the Board rather than the state court had jurisdiction, Rec. Pg. 49, do not sustain the holding of the state court.

The first case cited by the state court, **National Labor Relations Bd. vs. Am. Car & Foundry,** 161 Fedl. (2d) 501, Rec. Pg. 49, merely discusses the interpretation of what the word "encourage" means so as to constitute "discrimination" under the Act. That case not only does not support the state court's position but actually holds to the contrary and supports the petitioner's contention. The other cases cited, Rec. Pg. 49, are merely actions in which the courts reviewed decisions of the National Labor Relations Board to determine whether findings as to "unfair labor practices" were supported by the evidence. However, none of these other cases cited by the state court involve the vital question with which we are concerned, that is, whether the discrimination charged was "to encourage or discourage membership" as provided by the Act so as to constitute "an unfair labor practice" as defined by the Act. The decisions of the federal courts which the petitioner previously cited and which involve that exact issue are diametrically opposed to the ruling of the state court.

B. Even if the Causes of Action for Breach of Contract or Tort do Constitute "Unfair Labor Practices" as Defined by the Act, the State Court is

not Divested of Jurisdiction over these Causes of Action nor is Exclusive Jurisdiction Thereof Vested in the NLRB Under the Act.

There can equally be no question, as set forth in the citations to the judicial authorities hereafter made, that the state court had jurisdiction over these causes of action for damages by an individual employee for breach of contract or for tort, as set forth in the petitioner's complaint, even if these causes of action constituted "unfair labor practices" as defined by the Act. The error of the state court lay in overlooking the fact that the present action involves a suit for damages and that those cases where the court states "the jurisdiction of the National Labor Relations Board is exclusive" are not suits to collect damages but merely actions where the parties seek to enforce the provisions of the Act. An analysis of these judicial authorities discloses that the state court erred in holding to the contrary.

(1) STATE COURT'S INCORRECT INTERPRETATION OF EXCLUSIVE JURISDICTION OF THE NLRB UNDER THE ACT.

The state court ruled that the actions set forth in the complaint constituted "unfair labor practices" as defined by the Act and that the petitioner's remedy was before the National Labor Relations Board, Rec. Pg. 49. The state court, upon this basis, decided that it had no jurisdiction to entertain the action because exclusive jurisdiction thereof was vested by the Act in the National Labor Relations Board, Rec. Pg. 50. The state court in so doing misinterpreted the federal statutes. Its interpretation was also contrary to

the decisions of the lower federal courts and the state courts involving the exact issues and in addition was contrary to the reasoning of the United States Supreme Court in analogous cases.

The overwhelming weight of judicial authority holds that Congress under the National Labor Relations Act has not preempted the entire field of labor law. There can be no question that these authorities hold that the Act does not divest the state court of jurisdiction over a suit for damages based upon a common law cause of action. There can be equally no question that exclusive jurisdiction over such a cause of action is not vested in the Board even if that cause of action constitutes an "unfair labor practice" under the Act. The present decision of the state court was contrary to the holding of the authorities in cases involving not only similar but also the exact issues that are involved in our case. The following are typical and illustrate the petitioner's contention:

(a) Congressional intent to allow the enforcement of collective bargaining contract to be left to the usual process of the law and not to the National Labor Relations Board.

Citations to hearings of committees in Congressional Reports,

Teller, Labor Disputes, Vol. 2, Supp. (1950), #398.162, Pg. 174.

(b) State court cases establishing jurisdiction of state courts as against National Labor Relations Board over actions for damages for loss of wages involving breach of contract or tort which also constitute "unfair labor practices" under the National Labor Relations Act.

Basile vs. Fisher, (N.Y.) (1949) (tort action), 197 Misc. 493, 496;

Reichert vs. Quindazzi, (N.Y.) (1938) (breach of contract), 6 N.Y.S. (2d) 284, 286;

Goerner vs. Lippe, (N.Y.) (1941) (breach of contract), 3 Labor Cases, #60285, Pg. 60866.

(c) Federal court cases establishing jurisdiction of state court as against National Labor Relations Board to enact and enforce legislation relating to "unfair labor practices" where they are not designated as "unfair labor practices" under the National Labor Relations Act.

Algona Plywood & Veneer vs. Wis. Emp. Bd., (1948), 336 U.S. 301, 313;

Allen Bradley Local vs. N.L.R.B., (1942), 315 U.S. 740, 748;

MacKay vs. Loews, Inc., (1950), 182 Fedl. (2d) 170, 172;

Studio Carpenters Local vs. Loews, Inc., (1950), 182 Fedl. (2d) 168, 169;

Schatte vs. Int'l. Alliance, (1950), 182 Fedl. (2d) 158, 163, reaffirming 165 Fedl. (2d) 216 (1948), which affirmed 70 Fedl. Supp. 1008, 1011 (1947);

John Hancock Mut. Life Ins. vs. United O & P Workers, (1950), 93 Fedl. Supp. 296, 304 ff.;

United Elec. Wkrs. vs. Westinghouse, (1946), 65 Fedl. Supp. 420, 422.

(d) Federal court cases establishing jurisdiction of federal courts as against National Labor

Relations Board over actions for loss of wages or over actions involving breach of contract and tort which also constituted "unfair labor practices" under the National Labor Relations Act.

Textile Wkrs. Union vs. Arista Mills, (1951), 193 Fedl. (2d) 529, 533;

Marrazoni vs. Riggs National Bank, (1950), 184 Fedl. (2d) 349, 350;

U.A.W. vs. Wilson Athletic Goods, (1950), U.S. Dist. Ct. (Ill.) CCH-#65867, Pg. 7784;

Reed vs. Faiwich Airflex, (1940), 86 Fedl. Supp. 822, 824;

Wilson & Co. vs. United Pack. House Wkrs., (1949), 83 Fedl. Supp. 162, 165;

Intl. L. S. & W. Union vs. Juneau Spruce, (1952), 342 U.S. 237, 244.

(e) Federal court cases establishing jurisdiction of state court as against federal court in actions involving contractual rights under the Act, including breach of contract and conspiracy, upon grounds that actions involved interpretation of contract under state law and so no federal question was involved of which the federal court had jurisdiction.

Schatte vs. Intl. Alliance, (1950), 182 Fedl. (2d) 158, 163, reaffirming 165 Fedl. (2d) 216 (1948), which affirmed 70 Fedl. Supp. 1008, 1011 (1947);

MacKay vs. Loews, Inc., (1950), 182 Fedl. (2d) 170, 172;

Studio Carpenters Local vs. Loews, Inc., (1950), 182 Fedl. (2d) 168, 169.

(f) State and federal court decisions in analo-

gous cases under the Railway Labor Act, the reasoning of which is applicable to our case, establishing jurisdiction of the state court as against Railway Labor Board over actions involving right to recover for breach of contract or tort upon collective bargaining contracts under that Act.

STATE CASES:

Dooley vs. Leigh Valley R.R., (1941), 130 N.J. Eq. 75, 85;

Rentschuler vs. Miss. R.R., (1934), 95 A.L.R. 1, 7, 126 Neb. 493, 253 N.W. 694;

Grand Intl. Bro. of Eng. vs. Mills, (1934), 31 Pac. (2d) 971, 977, 43 Ariz. 379.

FEDERAL CASES:

Priest vs. Chicago R.I. & P.R.R., (1951), 189 Fedl. (2d) 813, 815;

Slocum vs. Del. L. & W. R.R., (1950), 339 U.S. 239, 244;

Ord. of Ry. Conductors vs. So. Ry., (1950), 339 U.S. 253, 256;

Moore vs. Ill. Cent. R.R., (1941), 312 U.S. 630, 634.

(2) STATE COURT'S RULING AS NOT SUBSTANTIATED BY ITS AUTHORITIES CITED.

The state court quoted, Rec. Pg. 48, from **Schatte vs. International Alliance**, 182 Fedl. (2d) 158, in ruling that the state court had no jurisdiction because "the exclusive remedy for the commission of an unfair labor practice was in proceedings before the National Labor Relations Board."

It appears, however, that the circuit court in that case reviewed the decision of the district court, 70 Fedl. Supp. 1008, in which the district court specifically held that an action for declaratory judgment for conspiracy arising out of a collective bargaining contract was one of contractual interpretation which must be determined under state laws by a state court rather than by a federal court under the federal laws and that in any event, at Page 1011, the "suit does not arise under the constitution or laws of the United States, and the Circuit Court lacks jurisdiction" so that the complaint must be dismissed. The circuit court affirmed, and correctly so, this position. This is a far cry from the ruling adopted by the state court upon the basis of that case. The cases quoted in the excerpt from **Schatte vs. International Alliance,** Rec. Pg. 48, are equally inapplicable and fail to sustain the ruling that the state court has no jurisdiction over the causes of action because they constitute "unfair labor practices" as defined by the Act.

These cases wherein the court states "the jurisdiction of the National Labor Relations Board is exclusive" merely involve actions to enforce the provisions of the Act. They do not involve suits for damages for breach of a collective bargaining contract or for tort. Such actions must be brought before a state court.

X. A DECISION OF THIS COURT UPON THE ISSUES PRESENTED AS MAKING QUESTION OF EXHAUSTION OF REMEDIES IMMATERIAL.

The state court in its decision made reference to

the principles of law concerning the failure of the petitioner to appeal to the Board's counsel from the Regional Director's refusal to issue a complaint and to the principle of law concerning exhaustion of remedies. Upon the basis of the application of these principles, the state court ruled that the petitioner was not entitled to maintain the present action. Rec. Pg. 50.

The only actual question raised in our case as to these facts was as to "res adjudicata," Company's Defense, Rec. Pgs. 15, 16 and Union's, Rec. Pgs. 25, 26. The state court, however, in its decision referred to the issue of "exhaustion of remedies," Rec. Pg. 50. There can be no question that the petitioner's action did not constitute "res adjudicata." **Republic Steel Corp.** (1945), 62 Natl. Lab. Rel. Bd. 1008, 1022; **Gibbs Corp.** (1947), 74 Natl. Lab. Rel. Bd. 1181, 1244; **Natl. Lab. Rel. Bd. vs. Baltimore Trust,** (1944), 140 Fedl. (2d) 51, 54; **Natl. Lab. Rel. Bd. vs. Phillips Gas & Coal,** (1944), 141 Fedl. 304, 306.

Even more important, however, is the fact that the law applicable to the principle of "exhaustion of remedies" becomes merely academic at this stage of the proceedings. The reason for this is that the paramount issue involved is one of jurisdiction. If, therefore, this court should decide that the state court incorrectly ruled that the causes of action set forth in the complaint constituted "unfair labor practices" as defined by the Act, then the state court would naturally have jurisdiction and the question of whether the petitioner appealed or exhausted his administrative remedies would become immaterial; and likewise, if this court should decide that the state court has jurisdiction of these causes of action even

if they did constitute "unfair labor practices" as defined by the Act, the question of whether the petitioner appealed or exhausted his administrative remedies would likewise become immaterial.

It is the petitioner's contention, however, that if this question as to exhaustion of remedies should be deemed material by this court, that the ruling of the state court upon these issues was also erroneous. The fact that the petitioner sought to withdraw his charge against the union and the employer when the Regional Director refused to issue a complaint instead of appealing to counsel for the Board was immaterial as the petitioner was merely pursuing a futile remedy which he abandoned. The reason for this is that the Act fails to provide for any judicial review or for any appeal from the refusal of the Board's counsel to issue a complaint so as to enable the petitioner to secure any hearing upon the charges made. The only judicial review afforded by the Act, the statement of the state court to the contrary not withstanding, Rec. Pg. 50, is an appeal from a final order of the Board under Section 10 (b) of the Act. Any determination not to issue a complaint, as in this instance, by the Board's counsel is final under Section 3 (d) of the Act. **Manhattan Cons. Co. vs. Natl. Lab. Rel. Bd.** (1952), 198 Fedl. (2d) 320; **Gen. Driver, Chauffeurs vs. Natl. Lab. Rel. Bd.**, (1950), 179 Fedl. (2d 492. There likewise can be no question that under the Act, the petitioner under these particular circumstances, was not required to exhaust his administrative remedy, if any, before instituting suit. This has been the interpretation of similar provisions of the Railway Labor Act by our Supreme Court and it is the only possible interpreta-

tion that can be taken by our Supreme Court of the same provisions in the National Labor Relations Act. **Slocum vs. Del. L. & W. R.R.**, (1950), 339 U.S. 239, 244; **Moore vs. Ill. Cent. R.R.**, (1941), 312 U.S. 630, 634.

The cases which the state court cited, Rec. Pg. 50, concerning the necessity of exhaustion of administrative remedies in ruling that the petitioner was not entitled to maintain the present action by reason of his failure to exhaust his remedies under the National Labor Relations Act, Rec. Pg. 50, do not sustain the holding of the state court in this instance. The cases cited are merely general statements of a principle of law which are applicable upon occasion to cases where judicial review is provided. There being none provided by the Act, the principles of law set forth in cases cited, therefore, have no application to our action.

XI. CONCLUSION

For the reasons foregoing, your petitioner respectfully claims that a writ of certiorari should be issued by the United States Supreme Court to review the rulings of the state court in accordance with the law in such cases made and provided.

Dated at Bridgeport, Connecticut, this 18th day of November, 1952.

The Petitioner,
William P. McNish,
By: David R. Lessler,
His Counsel.

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